

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 11, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09KD-142

Kauai

Cancellation of Revocable Permit No. S-7333 to Milton K.C. Ching and Melanie-Ann P. Ching, and Issuance of Revocable Permit to William J. Sanchez for Pasture Purposes, Lihue, Kauai, Tax Map Keys: (4) 3-9-02: portion 01 and 3-9-01: portion 02.

APPLICANT:

William J. Sanchez, Single

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua and of Lihue-Koloa Forest Reserve situated at Lihue, Wailua, Kauai, identified by Tax Map Keys: (4) 3-9-02: portion 01 and 3-9-01: portion 02, as shown on the attached map labeled Exhibit A.

AREA:

235 acres, more or less.

ZONING:

State Land Use District: Agricultural
County of Kauai CZO: Agriculture and Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-7333 to Milton K.C. Ching and Melanie-Ann P. Ching, Permittees, for diversified agriculture and pasture purposes.

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$52.00 (This rent was established by staff by prorating Revocable Permit No. S-7333 old rent of \$76.00 divided by the old area of 342 acres and multiplying the new area of 235)

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Applicant is sole proprietorship and, as such, is not required to register with DCCA, etc.

BACKGROUND:

The Land Board at its meeting of February 23, 2001, under agenda Item D-11, approved the issuance of 13 revocable permits to replace Lihue Plantation's use of approximately 6,700 acres of land formerly used for sugarcane cultivation, pasture, aquaculture, and diversified agriculture purposes. Furthermore, the Board approved to recommend to the Governor set asides to (1) County of Kauai for approximately 18 acres for recreational use; (2) Department of Land & Natural Resources, Division of Aquatic Resources for approximately 36.708 acres for a freshwater fisheries development; (3) Department of Land & Natural Resources, Division of Forestry & Wildlife for approximately 54 acres for addition to the Lihue-Koloa Forest Reserve and (4) Department of Land & Natural Resources, Division of State Parks for approximately 10 acres for addition to the Wailua River State Park. Revocable permits were approved as an interim measure while Land Division sought to develop a long-range plan for the use of the State property.

The Land Board at its meeting of August 24, 2001, under agenda Item D-20, approved and amended the original project by replacing a member who had dropped out, relocating another member and the County of Kauai's motocross track, refining unit sizes, creation of an additional 2 small units for the purpose of agricultural processing, establishing performance conditions, and establishing a buy-back of certain limited improvements criteria.

The Land Board at its meeting of October 25, 2002, under agenda Item D-4 approved the cancellation of Revocable Permit Nos. S-7281 to Kenneth Bray and S-7273 to G.E. Farms, Inc.; and Issuance of Revocable Permits to Kenneth Bray, G.E. Farms, Inc. Derek Rapozo, and Milton K.C. & Melanie-Ann P. Ching. Revocable Permit No. S-7333 to Milton K.C. & Melanie-Ann P. Ching was issued effective August 1, 2003 for diversified agriculture and pasture purposes.

The Land Board at its meeting of July 22, 2005, under agenda Item D-1, deferred staff's request to recommend to the Governor a set aside to Agribusiness Development Corporation (ADC) for lands in Hanamaulu and Wailua; and waters and water distribution system to the drainage basins of North Wailua, Kapaa, Anahola and Hanalei River. The Board decided to wait for the outcome of the contested case process on the Blue Hole Diversion (KIUC).

The Land Board at its meeting of January 11, 2008, under agenda Item D-1, approved in principle the issuance of a revocable permit to Green Energy Team LLC; subject to (1) a co-existence plan between the Applicant and any State permittees affected by the issuance of a revocable permit to Green Energy Team LLC and (2) this approval in principle shall not be deemed to be an approval of a revocable permit to the Green Energy as staff shall return to the Board at a later date for approval of the revocable permit disclosing the negotiated terms and conditions.

The Land Board at its meeting of April 25, 2008, under agenda Item D-1, approved to recommend to the Governor a set aside to ADC. The set aside will cover only the State owned properties known as Kalepa and does not cover the water or water distribution systems owned by the State in the drainage basins of North Wailua, Kapaa, Anahola and Hanalei. The Blue Hole Diversion (KIUC) is still pending.

The Land Board at its meeting of May 23, 2008, under agenda Item D-3, authorized (1) the cancellation of Revocable Permit Nos. S-7278, S-7282, S-7280, S-7341, S-7275, S-7399, S-7274, S-7334, S-7336, S-7276, S-7279, S-7335 and S-7333; (2) issuance of new revocable permits to the permittees for the new areas, pursuant to the co-existence agreement; (3) authorized the issuance of a revocable permit to Green Energy Team LLC; and amended Green Energy Team LLC acreage from 1,037 acres to 1,000 acres; removed 68 acres of irrigated Kalepa lands in Parcel Unit C from the lands originally assigned to Green Energy Team LLC; keeping those irrigated lands

available for immediate use by future diversified agriculture tenants; and the 31 acres shortfall in lands being transferred to Green Energy Team LLC created by the removal of the irrigated lands parcel will be replaced by additional lands surrendered by tenant Leslie Milnes and/or other members of the Kalepa Coalition.

Under the co-existence plan, Revocable Permit No. S-7333 land area would be reduced to 235 acres. Approximately 107 acres would be given to Green Energy Team LLC. Therefore, the new revocable permit to Mr. Sanchez should reflect only 235 acres.

When the new revocable permit document was sent to Mr. and Mrs. Ching for signing, they decided not to continue the use of the land and sold all their improvement to Mr. William Sanchez.

REMARKS:

Mr. William Sanchez is a permittee on one of the Kalepa lands (Revocable Permit No. S-7278). This new revocable permit will provide him additional acreage he lost to Green Energy Team LLC. Approximately 150 acres was reduced from Revocable Permit No. S-7278.

Besides holding Revocable Permit No. S-7278, Mr. Sanchez is a lessee on General Lease Nos. S-5519, S-5659, and S-5583. Staff is in the process of issuing 2 revocable permits to Mr. Sanchez due to the expiration of General Lease S-5346 and S-5349.

Mr. Sanchez has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Mr. Sanchez has been in the ranching business on State lands since 1993. Due to this extensive experience, he would qualify as a bona fide rancher pursuant to Section 171-14.5, Hawaii Revised Statutes. Mr. Sanchez is a good operator and manager of various State properties.

There are no other applicants requesting the use of these parcels.

A month-to-month tenancy is more appropriate than a long-term disposition in this case. The State properties are to be set aside to Agribusiness Development Corporation once Land Division has completed the issuance of new revocable permits to the permittees. It will be up to ADC if long-term agreements are appropriate.

No agency or community comments were solicited.

Staff notes that revocable permits issued to the Kalepa tenants contain provisions that are not normally found in the standard revocable permit document issued by Land Division. These unique conditions start as Condition B.19 through B.23. Specially B.23

states: Should a long term lease for the entire Kalepa property be offered at public auction within 10 years from the date of permit commencement, or prior to final subdivision approval, whichever shall first occur, any buyback consideration shall be limited to: permittee expenditures for fencing (at \$2.50/foot), security gating, and permanent irrigation improvements. Staff believes that B.23 should be deleted because Milton K.C. Ching and Melanie-Ann P. Ching received payment from Mr. Sanchez for their improvements, therefore, this condition should not be transferred to the new permittee. Furthermore, the Ching's violated Condition B.8. states: This permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.

The subject request is exempt from the preparation of an environmental assessment because there is no significant impact or change in the character of use from the previous use.

RECOMMENDATION: That the Board:

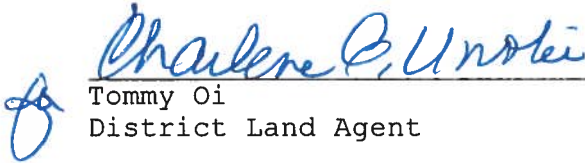
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Cancellation of Revocable Permit No. S-7333 to Milton K.C. Ching and Melanie-Ann P. Ching.
3. Authorize the issuance of a revocable permit to William J. Sanchez covering the subject area for pasture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. The buyback provision shall not be part of the new revocable permit to William J. Sanchez.
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

BLNR - Cancellation of RP 7333
& Issuance of RP
to William Sanchez

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Respectfully Submitted,



Tommy Oi
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 



EXHIBIT "A"

shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

- B.** 19. A. Permittee shall not be held liable for existing conditions which may be associated with previous use of the land by AMFAC.
- B. Permits will subordinate to any long term leases.
- C. By acceptance of this Permit, Permittee represents that the premises have been inspected and Permittee accepts the Premises as is.
- D. Permittee shall maintain the existing vegetative buffer zones along the plateau and valley rims. Any clearing or trimming activities shall be upon approval of the district land agent for the Fourth Land District, or a designee, in consultation with the Division of State Parks and Division of Forestry and Wildlife of the Department of Land and Natural Resources.
- E. Permittee shall be required to maintain that part of the irrigation system that is within Proposed Unit M as it currently exists, by keeping the ditches free and clear of vegetative overgrowth and/or destruction by livestock. Except for routine maintenance, alteration of these irrigation ditches, including but not limited to, filling ditches with any solid materials, shall not be permitted without prior written approval from the State Historic Preservation Officer and the district land agent for the Fourth Land district.
- F. A development and use plan shall be developed and submitted to the district land agent for review and approval. Upon approval of the development and use plan, such plan shall become incorporated into this Permit by reference as further conditions and failure to substantially comply with the development and use plan shall be grounds for revocation of this permit.
- G. In the event that a water user group shall be organized, or required by the Board to be organized, to manage and/or operate a water system that provides irrigation water to the Premises, Permittee shall be a participating member of such water user group. The water user group shall manage such water as may be permitted or licensed for the user group's use, and shall operate and manage the water system necessary for the storage, transport, and delivery of such water, including, but not limited to, reservoirs and main transmission ditches.

PRELIM. APPROV.
Department of the
Attorney General

- H. Along with other permittees in the vicinity of the Premises, Permittee shall be responsible, on a fair share basis, for the maintenance of common area roadways.
 - I. Water, reservoirs, and main transmission ditches, as may be identified by the water licensee, shall be under the control of the water user group.
- B.* 20. With the issuance of these permits, the permittees, including the affected government agencies that will collectively be responsible for the maintenance and operation of the infrastructure necessary to support the use of the land.
- B.* 21. Permittee shall comply with all laws and governmental regulations, and, upon request, shall cooperate with the implementation of governmental programs such as, but not limited to, cultural and historical site identification, miconia eradication, and the expansion of state parks.
- B.* 22. As recommended by the Historic Preservation Division:
- a. In former sugarcane lands, plantation era historic sites such as bridges and irrigation ditches shall be preserved or shall be maintained. If it is proposed to destroy these historic sites, then the State Historic Preservation Division shall be contacted to determine what if any site documentation is needed (742-7033)
 - b. Prior to any land clearing or land alteration in the gulches or wastelands with the premises, Permittee shall first obtain the approval of the Historic Preservation Division of the Department of Land and Natural Resources. Permittee shall submit a proposal for land clearing or land alteration to the Historic Preservation Division, which shall conduct a field check to determine if historic sites may be affected. If historic sites may be affected, an archaeological inventory survey shall be conducted, at permittee's cost and expense, by a qualified archaeologist, who shall submit a report on such survey to the State Historic Preservation Division for review and approval. Such report shall identify any significant historic sites and recommend a mitigation plan, if necessary, for the protection of the historic sites. If the State Historic Preservation Division determines that mitigation measures are necessary, Permittee shall submit a detailed mitigation plan to the State Historic Preservation Division for review and approval. The approved detailed mitigation plan shall be successfully executed prior to any land clearing or land alteration
 - c. If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during the project. In addition, consultation with the appropriate ethnic groups, the procedures outlined in Chapter 6E-43 shall be followed. It is necessary for the

treatment plan to be prepared after consultation with native Hawaiians, such as the Kauai Island Burial Council and the Office of Hawaiian Affairs.

- B. 23. Should a long term lease for the entire Kalepa property be offered at public auction within 10 years from the date of permit commencement, or prior to final subdivision approval, whichever shall first occur, any buyback consideration shall be limited to: permittee expenditures for fencing (at \$2.50/foot), security gating, and permanent irrigation improvements.
- B. 24. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By

Chairperson of the Board of Land and Natural Resources

Approved by the Board of
Land and Natural Resources
at its meeting held on 10/25/02,
Agenda Item D-4

PERMITTEE

Milton K.C. Ching

Milton K.C. Ching

Melanie-Ann P. Ching

Melanie-Ann P. Ching

APPROVED AS TO FORM:

Deputy Attorney General

Dated:

SEP 2 2003

